

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

**STATE OF TEXAS, *et al.*,**

**Plaintiffs,**

**v.**

**BUREAU OF ALCOHOL, TOBACCO,  
FIREARMS AND EXPLOSIVES, *et al.*,**

**Defendants.**

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**Civil Action No. 6:23-cv-00013**

**JOINT DISCOVERY/CASE MANAGEMENT PLAN  
UNDER RULE 26(F) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

- 1. State where and when the parties held the meeting required by Rule 26(f). Identify the counsel who attended for each party.**

Pursuant to Federal Rule of Civil Procedure 26(f), a conference was held among the parties by telephone on April 27, 2023. The following counsel were in attendance:

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**2. List all related cases pending in any other state or federal court. Identify the court and case number. State the relationship.**

There are seven pending cases challenging the same ATF Rule at the center of this case. The following cases were brought by a combination of individual plaintiffs, firearms manufacturers and/or distributors, and interest groups, and all of which involve similar claims:

- *Britto v. ATF*, No. 2:23-cv-19 (N.D. Tex.)
- *Colon v. ATF*, No. 8:23-cv-223 (M.D. Fla.)
- *FRAC v. Garland*, No. 1:23-cv-24 (D.N.D.)
- *Miller v. Garland*, No. 1:23-cv-195 (E.D. Va.)
- *Mock v. Garland*, No. 4:23-cv-95 (N.D. Tex.)
- *Second Amendment Foundation v. ATF*, No. 3:21-cv-116 (N.D. Tex.)
- *Watterson v. ATF*, No. 4:23-cv-80 (E.D. Tex.)

**3. Briefly describe what this case is about. Generally state the claims, defenses, and threshold issues that each party will likely assert.**

The State of Texas, Gun Owners of America, Inc., Gun Owners Foundation, and Brady Brown have brought the present action challenging ATF's final rule, *Factoring Criteria for Firearms With Attached "Stabilizing Braces,"* 88 Fed. Reg. 6,478 (Jan. 31, 2023) ("Rule"). Plaintiffs have brought eleven causes of action asserting that the Rule violates the Administrative Procedure Act and a number of constitutional provisions. Defendants contend that the Rule is a valid exercise of ATF's statutorily delegated authority that does not violate the APA or any provision of the U.S. Constitution.

- 4. Specify the basis of federal jurisdiction. Identify any parties who disagree and the reasons.**

The Court has jurisdiction over this action pursuant to 5 U.S.C. § 702 and 28 U.S.C. § 1331.

- 5. List any anticipated additional parties. Identify the party who wishes to add them, briefly explain why, and indicate a date by which to do so.**

The parties do not anticipate adding additional parties.

- 6. List any anticipated interventions. Briefly explain why.**

The parties do not anticipate any interventions.

- 7. Describe any class-action or collective-action issues. Provide the proposed definition of the class. Identify and state generally the basis for any opposition.**

Plaintiffs have not brought class allegations.

- 8. State whether each party represents that it has completed its Rule 26(a) initial disclosures. If not, indicate the date by which each party will do so and describe arrangements in that respect.**

Neither party has made initial disclosures under Federal Rule of Civil Procedure 26(a)(1). The parties agree that initial disclosures are not necessary or appropriate in this case. *See* Fed. R. Civ. P. 26(b)(i) (exempting administrative-record cases from initial-disclosure requirements).

- 9. Apart from initial disclosures, specify other discovery served or accomplished to date.**

To date, no party has undertaken discovery.

- 10. Describe the proposed agreed discovery plan.**

Defendants have agreed to produce the complete administrative record to Plaintiffs by May 19, 2023. Plaintiffs shall notify the Court if they intend to seek extra-record discovery by June 19, 2023. Defendants maintain that extra-record discovery is neither necessary nor appropriate in this case.

- 11. State the date by which the parties can reasonably complete the planned discovery.**

The parties cannot provide this estimate at this time as they have not determined whether any extra-record discovery will be sought in this case.

- 12. If the parties disagree on any part of the discovery plan, describe the separate views and proposals of each party.**

The parties are in agreement at this time.

- 13. Discuss the possibilities for a prompt settlement or resolution of the case at your Rule 26(f) meeting. Identify such possibilities. Describe what each party has done or agreed to do to bring about a prompt resolution of this dispute.**

The parties do not think that this case can be settled at this time.

- 14. Counsel to each party must discuss with their client the alternative dispute resolution techniques that are reasonably suitable to this case. Identify such potential techniques. State when the parties may effectively use any such technique.**

The parties do not think that any alternative dispute resolution techniques would be effective at this time.

- 15. A Magistrate Judge of this Court may now hear jury and nonjury trials. Indicate the parties' joint position on a trial before a Magistrate Judge.**

The parties do not unanimously consent to the United States Magistrate Judge presiding over a trial in this matter.

- 16. Identify any party that has made a jury demand and whether it was timely.**

No party has made a jury demand in this action.

- 17. Specify the number of hours it will likely take to present the evidence at trial in this case.**

At this stage of the case, the parties are not prepared to provide a reasonable and informed estimate of the number of hours it would take to try any triable issues.

- 18. List pending motions the Court could resolve at the Scheduling Conference.**

None.

- 19. List other pending motions.**

The parties have completed the briefing on Plaintiffs' Motion for Preliminary Injunction, ECF No. 16, and the Court may resolve this Motion at any time.

- 20. List all other matters that deserve attention of the Court at the Scheduling Conference.**

The parties note that the Court's preliminary injunction ruling, as well as the timing and resolution of anticipated appeals following that ruling, will significantly impact the parties' expected timing regarding the remainder of the litigation of this action.

21. **Complete and attach a proposed scheduling and docket control order where necessary to suggest modifications to the Court's standard order. Clearly indicate any disagreements with reasons in support of the requests made.**

Please see attached.

22. **Certify that all parties have filed the Disclosure of Interested Persons as directed in the Order for Conference and Disclosure of Interested Persons, listing the date of filing for original and any amendments.**

For Plaintiffs:

The Private Plaintiffs filed their Certificate of Interested Persons on April 27, 2023 (ECF #37).

The State of Texas, as a government entity, does not believe that it is required to file a certificate of interested persons.

For Defendants:

Defendants' position is that, as government entities and as a government official sued in his official capacity, they are not required to provide a disclosure of interested persons.

23. **List the names, bar numbers, addresses, telephone numbers, and e-mails of all counsel and unrepresented parties.**

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Dated: May 1, 2023

Respectfully submitted,

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